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Executive Director

June 18, 2008

Re: */ Property Tax Appeals by Hearing Officers*
Assignment No. 08-049

Dear Mr. :

This is in response to your February 22, 2008, letter to the Honorable Bill Leonard, Member of the State Board of Equalization, regarding a County (the County) ordinance that requires applicants appealing change in ownership or new construction issues to appear before a hearing officer instead of before the county board of supervisors or an assessment appeals board. Your letter was subsequently forwarded to the Board of Equalization's Legal Department so that we could respond to the legal arguments that you have raised.

As explained in more detail below, it is the Legal Department's opinion that the County's present policy requiring an applicant to appear before a hearing officer when appealing change in ownership or new construction issues is inconsistent with the requirements of Revenue and Taxation Code¹ section 1637, subdivision (a)(3).

Law

California Constitution article XIII, section 16 provides, in relevant part, that county boards of supervisors may create one or more assessment appeals boards that "shall constitute the county board of equalization for a county." Section 1605.5, subdivision (a)(1) provides that county boards of equalization have jurisdiction to hear cases involving a change in ownership or new construction. Section 1605.5, subdivision (a)(2) provides in relevant part that:

In any county that has established an assessment appeals board, the board of supervisors may, by ordinance, provide that it shall act as the county board of equalization for the purpose of hearing applications pursuant to this subdivision.

¹ All statutory references are to the Revenue and Taxation Code unless otherwise indicated.

Under the Revenue and Taxation Code a county board of supervisors may appoint one or more assessment hearing officers to conduct assessment appeals hearings. The principal statute permitting such appointments is section 1636:

The county board of supervisors may appoint one or more assessment hearing officers or contract with the Office of Administrative Hearings for the services of an administrative law judge pursuant to Chapter 14 (commencing with Section 27720) of Part 3 of Division 2 of Title 3 of the Government Code to conduct hearings on any assessment protests filed under Article 1 (commencing with Section 1601) of this chapter and to make recommendations to the county board of equalization or assessment appeals board concerning the protests. Only persons meeting the qualifications prescribed by Section 1624 may be appointed as an assessment hearing officer.

However, the Legislature has imposed several limits on how counties may deploy hearing officers, one of which is a requirement that the applicant (i.e., the taxpayer) request the hearing. Section 1637, subdivision (a) provides, in relevant part, that:

Hearings before an assessment hearing officer shall be conducted pursuant to the provisions of Article 1 (commencing with Section 1601) governing equalization proceedings by a county board of equalization or an assessment appeals board. The assessment hearing officer may conduct hearings on applications where all of the following apply:

. . . (3) *The applicant has requested that the hearing be held before an assessment hearing officer.* (Emphasis added.)

Once the hearing officers have completed the hearing, boards of supervisors may choose from three statutory provisions to determine whether or not the hearing officer's findings are final. Sections 1640 and 1641 provide that (unless a county adopts a resolution to the contrary) the county board of equalization is bound by the recommendation of the assessment hearing officer and the taxpayer has no further right of administrative appeal. However, a county board of supervisors may modify this rule by adopting a resolution under section 1640.1, subdivision (a), which grants a taxpayer the right to appeal the hearing officer's decision to the county board of equalization or assessment appeals board, or by adopting a resolution under section 1641.1, which grants the county board of equalization or assessment appeals board the right to vote on whether or not to accept the hearing officer's findings. Under section 1641.1, if the county board of equalization were to reject these findings, it would have a right to remand the appeal to an assessment appeals board with instructions for further proceedings.

Aside from the provisions of section 1636 et seq., the County maintains there is additional independent statutory authority for the County to appoint a hearing officer. Government Code section 27720 provides that:

The board of supervisors of any county may establish the office of county hearing officer. The duties of the office are to conduct hearings for the county or any board, agency, commission, or committee of the county.

Government Code section 27721 provides that a county may assign quasi-judicial powers to a hearing officer such as the right to issue subpoenas and the right to rule on the admissibility of evidence. Government Code section 27724 requires any person appointed under section 27720 to be an attorney with at least five years' practice experience, while section 27727 allows a county to contract for an administrative law judge in place of a hearing officer.

However, Government Code section 27728 appears to limit the use of the hearing officer provisions under Government Code section 27720 et seq. when there are other hearing officer statutes available:

The provisions of this chapter provide an *alternative to, and do not supersede, any other provision of law* providing for any matter to be heard or determined by a hearing officer. (Emphasis added.)

The County has enacted several county code sections pursuant to section 1605.5 that were designed to govern its hearing officer program for property tax appeals concerning change in ownership and new construction issues. Under County Code section 2.45.010:

The Board of Supervisors reserves unto itself acting as the County Board of Equalization the authority to hear issues as to whether or not property has been subject to a change in ownership or has been newly constructed as set forth in Section 1605.5 of the Revenue and Taxation Code. All such matters shall be referred to a hearing officer to be appointed by the Board of Supervisors for hearing, findings of facts and conclusions of law, and recommended decision as to the legal issues referred, but not as to equalization or valuation.

Under County Code section 2.45.020, the hearing officer must be an attorney with at least five years' professional experience (similar to the requirements of Government Code section 27724) and known to possess knowledge of property tax assessments.

Once the hearing has been held, the hearing officer is required to prepare for the Board written findings of fact and "conclusions of law supported by those findings," as well as a proposed order.² The matter is then placed on the agenda of the Board of Supervisors for its next meeting, for which the applicant must receive notice. County Code section 2.45.090 provides that:

The Board of Supervisors sitting as the Board of Equalization shall consider the findings of fact, conclusions of law and proposed order of the hearing officer. In the absence of fraud, bias or abuse of discretion, the findings of fact and conclusions of law shall be binding upon the Board, except that the Board may accept or reject the proposed order or may

² County Code section 2.45.080.

remand the matter to the hearing officer for further proceedings with instructions.

Not long after the County adopted the foregoing county code sections, a taxpayer asked the Legal Department to opine on the legality of the hearing officer requirement for change in ownership and new construction appeals. In an opinion letter dated September 23, 1993 (the September 23, 1993, Letter), we declined to find the foregoing county code sections invalid on the grounds that we lacked the authority to find a county ordinance to be unlawful. (Please see the attached September 23, 1993, Letter.) Our opinion letter also noted that ". . . we do not necessarily agree with all of the county's views, and . . . a number of substantial questions regarding the validity of the county's ordinance can be raised" Nevertheless, regrettably, the September 23, 1993, Letter could be read to suggest that the County could rely on section 1605.5 and on Government Code section 27720 et seq. as legal authority for its hearing officer program.

Discussion

In the present case, you have alleged that the County's mandatory hearing officer policy for change in ownership and new construction matters violates the provisions of section 1637, subdivision (a)(3), which requires a taxpayer's consent to any hearing held before a hearing officer.

In order to determine whether the County's hearing officer ordinances comply with section 1637, subdivision (a)(3), it is necessary first to examine whether there is any statutory authority that would excuse the County from complying with that section. Specifically, we will examine Government Code section 27728, section 1605.5 and section 1636.³

Government Code Section 27728

The County claims that it may base its hearing officer ordinances on Government Code section 27720 et seq. without being required to comply with section 1636 et seq. The key provision in this regard is Government Code section 27728. Government Code section 27728 provides that, "The provisions of this chapter provide an alternative to, and do not supersede, any other provision of law providing for any matter to be heard or determined by a hearing officer."

In our carrying out a statutory analysis, it is necessary to employ a number of canons of statutory interpretation. When interpreting a statute, "we turn first to the language of the statute, giving the words their ordinary meaning."⁴ If the plain language of a statute is unambiguous, there is no need to go beyond that pure expression of legislative intent.⁵ Statutes should also be harmonized with other statutes to which they relate.⁶ The words of a statute should be interpreted in the context of its statutory scheme. One may begin with dictionary definitions of

³ We do not address your assertion that the County ordinance violates a taxpayer's right to due process. California Constitution article III, section 3.5, forbids an administrative agency from holding a statute unconstitutional or unenforceable unless an appellate court has made this determination first. We are not aware of any appellate opinions on point. Therefore, we refrain from discussing whether the two statutory schemes provide sufficient due process protection under either the United States Constitution or the Constitution of the State of California.

⁴ *People v. Birkett* (1999) 21 Cal.4th 226, 231.

⁵ *Kobzoff v. L.A. County Harbor/UCLA Medical Ctr.* (1998) 19 Cal.4th 851, 860-861.

⁶ *In re Marriage of Hobdy* (2004) 123 Cal.App.4th 360, 366.

words, but one should always examine words in the context of the other words of the statute in attempting to determine the Legislature's intent.⁷ Interpretations that reduce the words of a statute to mere surplusage are to be avoided.⁸ Finally, a more specific statute should control over the more general statute.⁹

In the case of Government Code section 27728 the statute plainly states that the provisions of Government Code section 27720 et seq. ". . . do not supersede, any other provision of law" In response, the County has suggested that the inclusion of the word "alternative" in the statute permits it to rely on Government Code section 27720 et seq. without failing to comply with section 1636 et seq. This is not a logical reading of Government Code section 27728, which, in effect, asks us to read the clause ". . . and do not supersede . . ." out of the statute altogether. Indeed, if the Legislature had wished to lend the words the import that the County stresses, it could have deleted this phrase altogether. Merriam-Webster's Dictionary of Law provides the following definitions of "supersede":

1. to subject to postponement or suspension; *especially*: to suspend the operation of (a judgment or order) by means of a supersedeas.
2. to take the place of in authority.
3. to take the place of and render null or ineffective.

It appears likely that the Legislature wished the word "supersede" to convey something equivalent to either the second or the third definition provided above. While dictionary definitions do not automatically control in the interpretation of statutes, the County has not provided any alternative explanation for the function that "supersede" performs within Government Code section 27728 and in relation to the other statutes of Government Code section 27720 et seq. Instead the County has chosen to read the word out of the statute altogether. This is an unfounded result that violates a key canon of statutory interpretation.¹⁰

In addition, a side-by-side examination of section 1636 et seq. and Government Code section 27720 et seq. demonstrates that the Revenue and Taxation Code is more specific and, therefore, should control. Government Code section 27720 provides that a hearing officer may "conduct hearings for the county or any board, agency, commission, or committee of the county." By contrast, section 1636 states that hearing officers appointed under this provision shall:

. . . conduct hearings filed under Article 1 (commencing with section 1601) of this chapter and to make recommendations to the county board of equalization or assessment appeals board concerning the protests . . .

⁷ *Pearson v. State Social Welfare Board* (1960) 54 Cal.2d 184, 195.

⁸ *In re Marriage of Hobdy*, *supra*, 123 Cal.App.4th at p. 366.

⁹ See *San Francisco Taxpayers Ass'n v. Bd. of Supervisors* (1992) 2 Cal.4th 571, 577, quoting *Rose v. State of California* (1942) 19 Cal.2d 713, 723-724 ("A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.")

¹⁰ *In re Marriage of Hobdy*, *supra*, 123 Cal.App.4th at p. 366.

Government Code section 27720 et seq. provides a hearing officer procedure that is designed to be elastic enough to cover any of the myriad number of functions for which a county may hold hearings. By contrast, Section 1636 et seq. governs specifically how hearing officers may participate in appeals related to property tax assessments, which is why it employs specific property tax concepts like the "county board of equalization" and the "assessment appeals board." Clearly, section 1636 is the more specific provision.¹¹

Therefore, Government Code section 27728 prevents the County from creating a hearing officer program under Government Code section 27720 et seq. in place of section 1636 et seq.

Revenue and Taxation Code Section 1605.5

The County cites section 1605.5 as authority for its current system of appointing hearing officers to hear all appeals related to changes in ownership and new construction.

Section 1605.5, subdivision (a)(1) grants counties the jurisdiction to hear cases in which a change in ownership or new construction is at issue, while subdivision (b) gives counties the right to hear cases involving miscellaneous penalties related to property tax collection. Subdivision (a)(3) preserves the taxpayer's right to a superior court trial under a de novo standard for any change in ownership or new construction matter. Because these provisions do not seem relevant to the County's authority to appoint hearing officers, we focus on section 1605.5, subdivision (a)(2).

Section 1605.5, subdivision (a)(2) merely provides that a county board of supervisors may reclaim its power to act as the county board of equalization to determine whether property has undergone a change in ownership or property has been newly constructed, even when the county has established an assessment appeals board. While section 1605.5, subdivision (a)(2) certainly authorizes the Board of Supervisors to remove the authority to hear change in ownership and new construction matters from its assessment appeals board and place that authority in itself, it does not provide any independent authority for the appointment of hearing officers.¹² For this reason, it is section 1636 et seq., and not section 1605.5, which enables the County to assign authority to a hearing officer.

Therefore, section 1605.5, subdivision (a)(2) provides no support for the County's current hearing officer policy.

Revenue and Taxation Code Section 1636

Under section 1636, a county board of supervisors may appoint either a hearing officer *or* ". . . contract with the Office of Administrative Hearings for the services of an administrative law judge pursuant to Chapter 15 (commencing with section 27720) . . . of the Government Code to conduct hearings on any assessment protests filed under Article I [sections 1601 et

¹¹ See *San Francisco Taxpayers Ass'n v. Bd. of Supervisors*, *supra*, 2 Cal.4th at p. 577.

¹² We do not opine on the related issue of whether section 1605.5 places any restrictions on the ability of the County to appoint hearing officers to hear change in ownership and new construction matters pursuant to section 1636.

seq.]. . ."¹³ However such hearings must be conducted in a manner consistent with other provisions of the Revenue and Taxation Code, including section 1637, subdivision (a).

The County has contended that section 1636 incorporates by reference the statutory language of Government Code section 27720 with regard to hearing officers. It is our opinion that section 1636 only incorporates Government Code section 27720 et seq. with reference to the appointment of administrative law judges. If we were to accept the County's reading of section 1636, it would require *all* hearing officers to be attorneys with five year's practice experience pursuant to Government Code section 27724, as section 1636 is the only provision in the Revenue and Taxation Code that allows a board of supervisors to appoint a hearing officer.¹⁴ This would be an untenable result, as section 1636 permits hearing officers to hear ". . . *any* assessment protests filed under Article 1" (Emphasis added.) Such assessment protests may include applications for ". . . a reduction in an assessment on the local roll . . . ,"¹⁵ a very broad definition that encompasses disputes over valuation and other non-legal issues.

Therefore, we believe that section 1636 does not grant the County the authority to supplant the provisions of the Revenue and Taxation Code with conflicting provisions under the Government Code.

Revenue and Taxation Code Section 1637, Subdivision (a)

Having concluded that the County is subject to the statutory provisions of section 1636 et seq. when appointing hearing officers and in establishing procedures for assessment-related appeals, we now turn to whether County Code section 2.45.010 is consistent with the provisions of section 1637, subdivision (a)(3).

Section 1637, subdivision (a) provides that:

Hearings before an assessment hearing officer shall be conducted pursuant to the provisions of Article 1 (commencing with Section 1601) governing equalization proceedings by a county board of equalization or an assessment appeals board. The assessment hearing officer may conduct hearings on applications where all of the following apply:

- (1) The applicant is the assessee and has filed an application under Section 1603.

¹³ Section 1636 also requires that anyone named as a hearing officer must be qualified under section 1624. However, since County has a population greater than 200,000 people, the provisions of section 1624 do not apply to the appointment of hearing officers within that jurisdiction. (See Rev. & Tax Code, § 1624, subd. (c).) While section 1624.05 establishes minimal qualifications for assessment appeals boards in counties with a population greater than 200,000, its provisions are not incorporated by reference into section 1636 and, therefore, do not appear to apply to hearing officers.

¹⁴ The only exception is the appointment of a panel of hearing officers in cases in which the assessee is taxed on ". . . mining or mineral property located in more than one county. . . ." See Rev. & Tax Code, § 1642, subd. (a).

¹⁵ Rev. & Tax Code, § 1603, subd. (a).

- (2) For counties in which the board of supervisors has not adopted the provisions of Section 1641.1, the total assessed value of the property under consideration, as shown on the current assessment roll, does not exceed five hundred thousand dollars (\$500,000); or the property under consideration is a single-family dwelling, condominium or cooperative, or a multiple-family dwelling of four units or less regardless of value.
- (3) *The applicant has requested* that the hearing be held before an assessment hearing officer. (Emphasis added.)

Section 1637, subdivision (a) clearly states that the requirements of all three subdivisions must be satisfied before the County can authorize a hearing officer to preside over any kind of assessment-related appeal.¹⁶ Because you have not suggested that the County's hearing officer policy is in violation of any other provision of section 1637, we focus on section 1637, subdivision (a)(3).¹⁷

Section 1637, subdivision (a)(3) is unambiguous in requiring a taxpayer to consent before his appeal is transferred from a county board of supervisors or an assessment appeals board to a hearing officer. County Code section 2.45.010, however, provides in relevant part that:

All such matters *shall* be referred to a hearing officer to be appointed by the Board of Supervisors for hearing, findings of facts and conclusions of law, and recommended decision as to the legal issues referred, but not as to equalization or valuation. (Emphasis added.)

Section 1637, subdivision (a) plainly provides that a taxpayer contesting a change in ownership or a new construction-based reassessment must request to have her case heard by a hearing officer, while County Code section 2.45.010 is equally unambiguous in requiring such a taxpayer to have her appeal heard by a hearing officer, even if she wishes to have her case heard by an assessment appeals board. Therefore, County Code section 2.45.010 is not in conformity with section 1637, subdivision (a)(3).

Despite any patent or latent ambiguities concerning the opinions expressed in the September 23, 1993, Letter, it is now our opinion that Government Code section 27720 et seq. provides no basis for supplanting the hearing officer provisions under section 1636 et seq. To the extent that the September 23, 1993, Letter can be viewed as providing support for a hearing officer policy that does not comply with the requirements of section 1636 et seq., such reliance would not be appropriate from the date of this letter forward.

¹⁶ Since the Legal Department issued the September 23 1993, Letter, the Legislature (in 1995) has amended section 1637, subdivision (a) to add the language ". . . where all of the following apply. . . ." This makes it even more clear that all three enumerated requirements, including those of paragraph (3), must be satisfied before a hearing officer may be empowered to hold an assessment-related hearing.

¹⁷ In your letter, you also cited to section 1637, subdivision (b), which allows a board of supervisors to require the assessor's assent in addition to a taxpayer's consent before permitting a hearing to be held in front of a hearing officer for non-owner-occupied residential property. Because the County has not adopted such a resolution, we do not address this point here.

June 18, 2008

As it is our opinion that County's current hearing officer policy with respect to change in ownership and new construction issues is inconsistent with the requirements of section 1637, subdivision (a)(3), please be advised that the Board of Equalization's Legal Department has forwarded this opinion to the Chair of the County Board of Supervisors, the Assessor's Office and the County Counsel's Office, and requested meetings with the appropriate County officials to determine the proper course of action.

The opinions expressed in this letter are only advisory and represent the analysis of the Legal staff of the Board based on current law and the facts set forth herein. These opinions are not binding on any person, office, or entity.

If you have any questions or concerns about any matter related to our opinion, please do not hesitate to contact me.

Sincerely,

/s/ Andrew Jacobson

Andrew Jacobson
Tax Counsel

AJ/ef
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Attachment

cc:

| | |
|--------------------|--------|
| Mr. David Gau | MIC:63 |
| Mr. Dean Kinnee | MIC:64 |
| Mr. Todd Gilman | MIC:70 |
| Ms. Sherrie Kinkle | MIC:64 |
| Mr. David Yeung | MIC:64 |